IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13204 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIJALBHAI BHAGWANBHAI NAKUM THROUGH HIS SON NATHABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13204 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

Ms.Chandarana, Asst.GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 16/12/2004

ORAL JUDGEMENT

Rule. Ms.Chandarana, Ld.AGP waives service of rule for respondents. With the consent of learned

advocates for the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner is holding the land admeasuring 3 acres 10 gunthas at village Rajula. The show cause notice was issued by the Collector, dated 23.11.01 to the petitioner for breach of conditions on the ground that the petitioner has used the land for manufacturing of bricks. The petitioner submitted the reply on 3.12.2001 and stated that he is an illiterate person and the bricks are made in the land with a view to construct a place for his residence and for keeping the agricultural equipments and also for preserving fertilisers and he also submitted that the bricks are used for such purpose and neither the bricks are sold nor the land is given to anyone else for such purpose. The petitioner has prayed for condonation of such breach, if any. It appears that thereafter on 30.12.2002 the Collector, Amreli passed the order on the basis that there is an admission on the part of the petitioner to use the land for nonagricultural purpose and consequently penalty of 40 times of revenue amounting to Rs.42,086.41 ps,is imposed upon the petitioner. The petitioner carried the matter before the State Govt in revision and in revision also the State Govt proceeded on the basis that there is admission for utilisation of the land for other than agricultural purpose and therefore the order passed by the Collector imposing fine does not call for interference and it is under these circumstances the petitioner has approached this court by preferring this petition.

3. I have heard Mr.Pandya for the petitioner and Ms.Chandarana, Ld.AGP for respondent authorities.

4. Upon hearing the learned counsel for the parties and the perusal of the record shows that there is no dispute on the point that the petitioner has used portion of the land for preparing bricks. The case of the petitioner is that as such the bricks are used for construction of his house for residence and for keeping the crops, fertiliser and other agricultural equipments. There is no finding by the authority before imposing penalty that the bricks are not used for other purpose nor there is any finding that the bricks are sold by the petitioner to the other persons or the land is allowed to be used for such purpose by the petitioner to some third party. The authorities have proceeded on the basis that as the petitioner admitted his utilisation of the land for preparing bricks, there is admission on the part of the petitioner and therefore it is proved that the land

is used for nonagricultural purposes and therefore the penalty is imposed.

5. To examine the basis of the order passed by the authority it would be necessary to consider the provisions of section 65(1) of the Act. As per plain and simple reading of section 65 of the Act, any occupant of land assessed or held for the purpose of agriculture is entitled to erect farm-buildings, construct wells or tanks or make any other improvements thereon for the better cultivation of the land or its more convenient use for the purpose of agriculture. If an agriculturist constructs a farm building or makes improvement over the land for the better and convenient use of the land for agricultural purposes, such use is not prohibited and on the contrary expressly permitted. It appears that the petitioner used the part of the land for preparing bricks but such bricks are used for constructing house for keeping the agricultural equipments and for keeping fertiliser and crops. Such purpose, by no stretch of imagination can be said as use of the land for other than agricultural purpose. As such, such purpose can be said as for convenient agriculture and for better cultivation of the land. If the farmer has constructed a farm house or has made any construction over the land for better cultivation of the land or for some convenient use of the land for agricultural purpose, it can not be said that such use is permitted as per the provisions of Sec.65 of the Code. Had it been the case where the farmer has used the land for commercial activity of manufacturing bricks, or had it been the case where the farmer has allowed some third party to use the land for manufacturing of bricks, it may stand on different footing. But, if he himself has manufactured the bricks with a view to construct farm house over the land for storing the agricultural equipments, fertilisers etc., it can not at all be said that the land is used for the purpose other than agriculture. As such, such utilisation of the land is an incidental work for better and convenient use of the land for agricultural purposes.

6. In the above circumstances, it is apparent that both the authorities have exercised their power of imposing penalty beyond the scope and ambit of section 65 of the Code and therefore the order passed by the Collector and its confirmation thereof by the State Govt for imposing penalty can not be sustained in the eye of law.

7. In the result, the impugned order passed by the Collector and its confirmation thereof by the State Govt

for imposing penalty upon the petitioner is quashed and set aside. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

16.12.2004 (JAYANT PATEL,J)